attorney's Docket No.: 5543P005

**PATENT** 

## DECLARATION AND POWER OF ATTORNEY FOR PATENT APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below, next to my name.

I believe I am the original, first, and sole inventor (if only one name is listed below) or an original, first, and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled

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60/200,401 Application No	umber	April 28, 200 (Filing Date –	0 MM/DD/YYYY)			

60/200,511 Application Numbe	er	April 28, 2000 (Filing Date – I		<u>(Y)</u>		
60/200,402 Application Numbe	er	April 28, 2000 (Filing Date – N		<del>(Y)</del>		
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hereby appoint the part of this document substitution and revo and Trademark Offic	t) as my respe cation, to pros	ective patent atto secute this applic	rneys and p	atent agents	s, with full power o	of
Send corresponder ZAFMAN LLP, 1240 telephone calls to	(Name 0 Wilshire Bo Tarek N. Fa	of Attorney or oulevard 7th Fig	Agent) oor, Los An , (408)	-	SOKOLOFF, TA	
hereby declare that statements made of statements were ma are punishable by f States Code and that application or any p	n informatior ade with the l ine or imprise at such willfu	n and belief are knowledge that onment, or botl Il false stateme	believed to willful fals h, under Se	be true; ar e statemen ection 1001	nd further that th ts and the like so of Title 18 of the	ese o made
Full Name of Sole/Fi	rst Inventor <u>J</u>	J Garcia-Lupa-A	veves/	5		
nventor's Signature	2	16mon			<b>-</b> 7 ~	
	11/	700	10000	Date _	1-do-0	7 (
Residence	San Mateo, C (City, St	c/a_ Zvna_/ California ate)	aceves Citiz	Date _ enship	Mexico (Country)	7 (

Full Name of Joint/Se	econd Inventor <u>Bradley R. Smith</u>	<u> </u>		
Inventor's Signature	Boweshi	Date	7(20/01	
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## APPENDIX A

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## Title 37, Code of Federal Regulations, Section 1.56 Duty to Disclose Information Material to Patentability

- (a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
  - (1) Prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
  - (2) It refutes, or is inconsistent with, a position the applicant takes in:
    - (i) Opposing an argument of unpatentability relied on by the Office, or
    - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
  - (1) Each inventor named in the application;
  - (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.
- (e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.